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Maine Labor Relations Board Annual Report, Fiscal Year 2004

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ANNUAL REPORT
MAINE LABOR RELATIONS BOARD

Fiscal Year 2004

This report is submitted pursuant to 26 M.R.S.A. §§ 968(7) and 979-J(1) (1988).

Introduction

_____During the past year, the Board had requests for services from most segments of the public sector that have statutorily conferred collective bargaining rights. As will be noted later in this report, demand for the Board's services was approximately the same as in the previous year. The general uncertainty regarding the national economy and highly publicized shortfalls in state revenues throughout most of the reporting period reduced the resources available to fund collective bargaining settlements this year.

Members of the Board are appointed by the Governor, confirmed by the Legislature, and serve four-year terms, with the term of office of each primary member expiring on September 30 of successive years. The terms of the alternate members expire at the same time as that of their respective primary member. Public Chair Peter T. Dawson of Hallowell, Employee Representative Carol B. Gilmore of Charleston, and Employer Representative Karl Dornish, Jr., of Winslow continued to serve throughout the year. Alternate Chairs Jared S. des Rosiers of Falmouth and Pamela D. Chute of Brewer, Alternate Employee Representatives Wayne W. Whitney of Brunswick and Robert L. Piccone of Portland, and Alternate Employer Representatives Edwin S. Hamm of Portland and Richard L. Hornbeck of Bowdoinham all continued to serve in their respective capacities.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff is the primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In instances that involved matters over which the Board has no jurisdiction, the staff continued the policy of providing some orientation for the inquirer, suggesting other agencies or organizations that might be of help, and making appropriate referrals.

The Board's web site continued to be the prime source for research of Board precedent. The site is equipped with a search engine and contains an extensive database of the Board's prohibited practice and representation appeals decisions, as well as Superior and Supreme Judicial Court opinions reviewing the Board's decisions. Access to this case law helps public employers and bargaining agents to know the parameters of required or permitted conduct and to use such information to avoid violating the law. The web site was updated this year by adding the Maine.gov "banner," conforming its appearance and functionality with those of the other State agencies. The web site also includes links to the statutes administered by the Board, the complete text of the Board's Rules and Procedures, the Board's forms, a bulletin board of current activities, and links to other state and federal labor relations agency sites. The web site is maintained and updated by Board staff and has been highly praised by the labor-management community.

Legislative Matters

One bill introduced last year and carried forward for consideration in the Second Regular Session, L.D. 1344, An Act To Give Teachers a Greater Voice in School Improvement, would have had a direct substantive impact on the jurisdiction of the Board. The substance of this measure, which sought to alter the scope of mandatorily negotiable subjects to include topics that have been deemed to be educational policy matters, was discussed at length in last year's report. The Joint Standing Committee on Educational and Cultural Affairs convened additional work sessions on the bill this year and, at the Committee's invitation, the executive director answered questions concerning practice under current law and the changes that would result from enactment of the measure. After hearing from one representative of the proponents and one from the opponents of the bill, the Committee issued a divided report. The Legislature did not enact any change in the scope of mandatory bargaining this year.

One bill carried forward for consideration by the Legislative Joint Standing Committee on Judiciary, L.D. 1295, An Act To Enact the Uniform Mediation Act, could have had an impact on the agency's management of the public sector collective bargaining process. The bill was reported unanimously ought not to pass early in the session. The Board staff monitored 7 additional bills, attending public hearings and work

sessions, and otherwise assisting Legislative committees in their consideration of matters that might have potential impact on collective bargaining or agency operations. The two most significant of these bills, L.D. 1318, An Act To Promote the Public Interest by Providing for Reasonable Rates of Compensation for Forest Products Harvesting and Hauling Services, and L.D. 1964, An Act To Protect Forest Products, Loggers and Haulers, were enacted and became law as Chapters 670 and 674 of the Public Laws of 2003, respectively, and are more fully discussed in the annual report of the State Board of Arbitration and Conciliation.

Bargaining Unit and Election Matters

During fiscal year 2004, the Board received 24 voluntary agreements or joint filings for the establishment of or change in collective bargaining units. There were 23 of these filings in FY 03, 19 in FY 02, 21 in FY 01, 34 in FY 00, and 33 in FY 99. Of the 24 FY 04 filings, 16 were for municipal or county government units, 4 for educational units, and 4 concerned State Executive Branch employees. The unit agreements were filed by the following employee organizations:

<u>Teamsters Union Local 340</u>	10 agreements
(Berwick Professional Unit)	
(Berwick Supervisory Unit)	
(Biddeford Police Staff Support Unit)	
(Brunswick Public Works Department)	
(Fort Fairfield Police Sergeants and Patrolmen)	
(Hancock County Administrative Unit)	
(Saco Clerical Unit)	
(Saco Supervisory Unit)	
(Saco Wastewater Treatment Plant Unit - 2)	
<u>Maine State Employees Association</u>	7
(State Retire. System Admin. Services Unit)	
(State Retire. System Prof. & Tech. Services Unit)	
(State Retire. System Supervisory Services Unit)	
(State Supervisory Services Unit - 3)	
(State Law Enforcement Unit)	
<u>Maine Education Association/NEA¹</u>	4
(MSAD #3 Bus Drivers Unit)	

¹While reference is made to the Maine Education Association/NEA for sake of simplicity, the various activities described were undertaken by local associations which are affiliated with MEA.

(MSAD #29 Ed. Techs. & Secretaries Unit)	
(MSAD #29 Secretaries Unit)	
(Old Orchard Beach ESP Unit)	
<u>IAMAW</u>	2
(Buxton Public Works Unit)	
(Wiscasset Town Employee Unit)	
<u>AFSCME Council 93</u>	1
(Skowhegan Recreation Dept. Unit)	

Of the 25 filings, 6 were for new units and 19 were for changes to existing units.

Ten (10) unit determination or clarification petitions (submitted when there is no agreement on the composition of the bargaining unit) were filed in FY 04: 8 were for determinations and 2 were for clarifications. Two (2) of the new unit petitions actually went to hearing. Agreements were reached in 4 cases, 1 was deemed sufficient, and 3 are pending. Once a unit petition and response are filed, a member of the Board's staff, other than the assigned hearing officer in the case, contacts the parties and attempts to facilitate agreement on the appropriate bargaining unit. This involvement, successful in 33.3% of the cases this year, saves substantial time and litigation costs for public employers and bargaining agents. There were 15 unit petitions filed in FY 03, 14 in FY 02, 10 in FY 01, 13 in 00, and 20 in FY 99. The unit determination/clarification requests were filed by the following employee organizations:

<u>Maine Education Association/NEA</u>	3 petitions
(Five Town CSD Custodians)	
(MSAD #3 Bus Drivers/Mechanics)	
(MSAD #47 Nutrition, Custodians/Maint., Ed Techs.)	
<u>Maine State Employees Association</u>	3
(State Pro-Tech Unit)	
(State Admin. Services Unit)	
(York County Supervisory Employees)	
<u>IAMAW</u>	2
(Buxton Highway Dept. & Transfer Station)	
(Wiscasset General Government Unit)	
<u>AFSCME Council 93</u>	1
(Skowhegan Recreation Dept.)	
<u>Teamsters Union Local 340</u>	1
(Hancock County Administrative Unit)	

After the scope and composition of the bargaining unit is established, either by agreement or by unit determination, a bargaining agent election is conducted by the Board to determine the desires of the employees, unless a bargaining agent is voluntarily recognized by the public employer. During FY 04 there were 2 voluntary recognitions filed, involving the following employee organizations:

<u>Maine Education Association/NEA</u> (MSAD #52 ESP Unit)	1 voluntary recognition
<u>Teamsters Union Local 340</u> (Brunswick Public Works Dept.)	1

Ten (10) bargaining agent election requests were filed in FY 04; 6 elections were actually held, including matters carried forward from FY 03, and 4 election matters are pending. The bargaining agent election petitions filed this year involved the following employee organizations:

<u>Maine Education Association/NEA</u> (Five Town CSD Custodians Unit) (MSAD #3 Bus Drivers/Mechanics Unit) (MSAD #29 Secretaries Unit) (MSAD #47 Nutrition, Custodians/Maintenance, Ed Techs) (Old Orchard Beach ESP Unit)	5 petitions
<u>IAMAW</u> (Buxton Public Works Department) (Wiscasset General Government Unit)	2
<u>AFSCME Council 93</u> (Skowhegan Recreation Department)	1
<u>Maine State Employees Association</u> (York County Supervisory Employees Unit)	1
<u>Teamsters Union Local 340</u> (Hancock County General Government Unit)	1

In FY 03, there were 8 voluntary recognitions filed, 11 bargaining agent election requests received, and 13 elections held.

In addition to representation election requests, the Board received 10 requests for decertification/certification. This type of petition involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. The results of the decertification/certification petitions were as follows:

<u>Petitioner</u> (bargaining unit)	<u>Incumbent Agent</u>	<u>Prevailed</u>
Maine Association of Police (Brewer Police Command Unit)	AFSCME Council 93	MAP
Maine Association of Police (Brewer Police Patrol Unit)	AFSCME Council 93	MAP
Maine Association of Police (Bangor Police Commanding Officers Unit)	Teamsters Union Local 340	MAP
Maine Association of Police (Orono Police Unit)	Teamsters Union Local 340	MAP
Maine Association of Police (Berwick Police Unit)	Teamsters Union Local 340	MAP
Maine Association of Police (Bangor Patrol Officers & Detectives Unit)	Teamsters Union Local 340	MAP
Maine Association of Police (Ellsworth Police Unit)	Teamsters Union Local 340	MAP
Maine Association of Police (Old Town Police Unit)	AFSCME Council 93	Pending
Maine Association of Police (Gorham Dispatchers)	Teamsters Union Local 340	Pending
Maine Corrections Officers Liberated Union (State Institutional Services Unit)	AFSCME Council 93	AFSCME

The Board received no straight decertification petitions in FY 04. No new union is involved in these petitions; rather, the petitioner is simply attempting to remove the incumbent agent.

There were 3 election matters carried over from FY 03. Consequently, there were 23 such matters requiring attention during the fiscal year; this compares with 22 in FY 03, 18 in FY 02, 17 in FY 01, 30 in 00, and 33 in FY 99.

Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

The number of new mediation requests received during the fiscal year increased marginally. There were 65 new requests filed this year compared with 64 last year. In addition to the new mediation requests received during FY 04, there were 32 matters carried over from FY 03 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year was 97, up from 87 in FY 03. During the downturn in the regional economy in the early 1990's, most parties were opting for one-year agreements, hoping that more favorable conditions would prevail the following year. As a result, many more agreements expired in FY 93 and FY 94 than would normally be expected. Beginning in mid-FY 1994, more parties resumed negotiating multi-year agreements. Given the statutory restriction that collective bargaining agreements not exceed three years' duration, last year's report anticipated continued growth in demand for mediation services. With the downturn in the regional economy and the uncertainty in state revenues, the resources available for the settlement of labor agreements became tighter, resulting in increased demand for mediation services.

This year the settlement rate for cases where mediation was concluded, including carryovers from FY 03, increased somewhat this year. This year's settlement rate was 86.8%. During the past 15 years, the settlement rate has ranged from 50% in FY 1995 to this year's rate, with a mean of 76.12%. Anecdotal evidence from the mediators and partisan representatives suggests that the reduction in resources to fund settlements this year coupled with significant increases in health insurance premiums, as well as continued disruption in the private sector economy, resulted in a more difficult bargaining climate this year. Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of the twelve-month period, we have

reported settlement figures that represent all matters in which mediation activity has been completed during the reporting period.

Four requests for preventive mediation services were received this year. Interest in non-confrontational, interest-based negotiations in the labor-management community had waned in the preceding two years, despite the effectiveness of the process in achieving settlements (53 settlements in 55 cases). In fact, prior to FY 02, all of the preventive mediation efforts had been successful. Preventive mediation is only undertaken upon the joint request of the parties; therefore, the request for such services this year is a positive development.

Fact finding is the second step in the three-step statutory dispute resolution process. In Fiscal Year 2004, 13 fact-finding requests were filed. Those requests represent a significant decrease from last year's level. Considering all cases, including carryovers from FY 2003, 13 petitions were withdrawn or otherwise settled, 7 requests went to hearing, and 4 petitions are pending hearing. Last year 8 fact-finding hearings were held. The following employee organizations filed requests for fact-finding services this year:

<u>Maine Education Association</u>	7 requests
(SAD 6 Teachers Unit)	
(Union #29 Teachers Unit)	
(Brewer Teachers Unit)	
(Union 90 Teachers Unit)	
(Jackman Teachers Unit)	
(Yarmouth Ed Techs Unit)	
(MSAD #46 Teachers Unit)	
<u>AFSCME Council 93</u>	2
(Saco Public Works Unit)	
(State Institutional Services Unit)	
<u>International Association of Firefighters</u>	2
(Local 1624 Sanford)	
(Local 1650 Augusta)	
<u>Teamsters Union Local 340</u>	2
(Hancock County)	
(Portland Water District)	

Last year, the Maine Education Association and Teamsters Local 340 each filed 11 requests.

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board and unless agreed otherwise by the parties, an interest arbitration award is binding on the parties on non-monetary issues. Salaries, pensions and insurance issues are subject to interest arbitration, but an award on these matters is only advisory. In recent years the Board has received few interest arbitration requests. None have been received in the last three years. One was filed in FY 01, none in FY 00, 2 in FY 99, and 2 in FY 98.

The various labor relations statutes do not require parties to notify the Board when they are invoking mandatory interest arbitration. The statutes do require that arbitration awards be filed with the Board; however, they usually are not. This year, one interest arbitration reports was received. While we assume that this was the sole interest arbitration award in the public sector during the year, it may be that parties have simply failed to provide proper notification to the Board.

Prohibited Practices

One of the Board's main responsibilities in administering the public sector collective bargaining process is to hear and rule on prohibited practice complaints. Formal hearings are conducted by the full, three-person Board in such matters. Sixteen (16) complaints were filed in FY 04. This represents a decrease over the FY 03 level. For the last six years, including the current year, the number of complaints filed each year has fluctuated from a low of 16 to a high of 26, with the mean being 20.8. Many of the complaints received during the past year charge violations of the duty to negotiate in good faith.

In addition to the 16 complaints filed in FY 04, there were 19 carryovers from FY 03, compared with 23 complaints and 10 carryovers last year. Board panels conducted 12 evidentiary hearing days during the year, compared with 1 in FY 03. The Board issued formal Decisions and Orders in 7 cases, including 4 Interim Orders (one on the basis of a stipulated record, hence no evidentiary hearing was required). Board chairs, sitting as prehearing officers, held conferences in 10 cases, compared with 7 in FY 03. Three (3) cases are being held in abeyance, including 1 in Superior Court on appeal of an arbitration decision. Eleven (11) complaints were dismissed or withdrawn at

the request of the parties. Four (4) complaints await prehearing and/or hearing, and 1 case is pending Board decision. Six (6) cases were dismissed by the executive director.

The executive director has continued to be actively involved settling prohibited practice cases through telephone conferences and personal meetings with the parties' representatives. Continuing a development introduced in FY 96, the services of the executive director or a Board attorney are offered on the day of the hearing to attempt to settle cases. If the parties either decline the Board's offer or if the effort is unsuccessful, the Board members are present, ready to convene a formal evidentiary hearing.

Prohibited practice complaints, with the respondent noted in parenthesis, were filed by the following this year:

<u>AFSCME Council 93</u>	3 complaints
(Governor Baldacci & State of Maine)	
(Governor Baldacci, et al., & MCOLU)	
(Waterville)	
<u>International Association of Machinists</u>	3
(Bath)	
(Buxton)	
(Wiscasset)	
<u>Maine Education Association/NEA</u>	3
(Jay School Committee)	
(Supt. Witham & MSAD #13 Board of Directors)	
(Supt. Michaud & Scarborough Board of Ed.)	
<u>Individuals</u>	2
(Maine State Employees Association)	
(State of Maine)	
<u>International Association of Firefighters</u>	2
(Auburn)	
(Augusta)	
<u>Maine State Employees Association</u>	2
(Maine Legislative Council)	
(York County)	
<u>Teamsters Union Local 340</u>	1
(MSAD #5)	

Appeals

_____ One appeal in a representation matter was filed with the Board this year -- The Objection to the Conduct of A Bargaining Agent Election in Maine Education Association and Old Orchard Beach School Board, Educational Support Professionals

Unit Bargaining Agent Election, No. 04-EA-01 (filed Oct. 22, 2003). In an effort to avoid an evidentiary hearing in the matter, the executive director met with the parties, described the agency's internal processes and procedures in conducting bargaining agent elections, and notified the parties that one of the four unit employees who had allegedly not received a ballot had not only received a ballot but had in fact voted in the election. The parties successfully negotiated terms permitting withdrawal of the objection.

_____ Last year's report referred to a motion pending in Superior Court that had been filed by an individual whose prohibited practice case against his former employer and former union was dismissed by the Board in 1997, after a full evidentiary hearing. The motion, which the individual filed without the assistance of an attorney, sought to have his case reopened in Superior Court or remanded to the Board. It purported to have been filed under M.R.Civ.Pro. 60(b), Relief From Judgment or Order. The Superior Court noted that the individual's motion was "not recognized under the Civil Rules and is dismissed by the Court on its own motion." *Larry Casey v. M.L.R.B*, No. AP-97-90 (Me. Super. Ct, Ken. Cty., Sept. 11, 2003).

Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004
Unit Determination/ Clarification Requests Number filed--	20	-35% 13	-23.1% 10	+40% 14	+7% 15	-33% 10
Agreements on Bargaining Unit (MLRB Form #1) Number filed--	33	+3% 34	-38.2% 21	-9.5% 19	+21% 23	+4.3% 24
Voluntary Recognitions (MLRB Form #3) Number filed--	4	+200% 12	-41.7% 7	-57.1% 3	+167% 8	-75% 2

Bargaining Agent Election Requests Number filed--	19	-36.8%	-50%	+50%	+22%	-9.1%
Decertification Election Requests Number filed--	5	-80%	100%	-50%	-100%	--
Decert./Certification Election Requests Number filed--	5	+20%	-67%	+150%	-40%	+233%
Mediation Requests Number filed--	69	+5.8%	-16.4%	-11.5%	+18.5%	+1.6%
Fact-Finding Requests Number filed--	22	-31.8%	-13.3%	+7.7%	+64%	-43.5%
Prohibited Practice Complaints Number filed--	19	+36.8%	-7.7%	-29.2%	+35.3%	-30.4%

The above table indicates that the demand for the Board's different services has varied during the fiscal year. For the past several years we have been predicting that public sector organizational activity may be nearing the point of saturation, given that the Board has been in existence since 1969 and many units, particularly education and fire fighter units, predated the establishment of the agency. As the number of organized employees approaches the universe of those eligible, the number of new units created each year will decline. In fact, there was an increase in organizational activity this year and there are more units now than ever before. A larger number of units means more requests for changes in unit composition, more elections to change or oust bargaining agents, a greater potential for prohibited practice complaints, and increased demand for dispute resolution services in the future.

During FY 04, public sector labor-management relations in Maine continued to mature. Parties continue to rely on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of more mature labor relations is evidenced by the strong demand for mediation services and the continued willingness by the parties to settle prohibited practice complaint cases. In

sum, the Board's dispute resolution services fostered public sector labor peace throughout the fiscal year.

Dated at Augusta, Maine, this 1st day of July, 2004.

Respectfully submitted,

Marc P. Ayotte
Executive Director
Maine Labor Relations Board